

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

2004 SEP 17 P 12:53

ING LIFE INSURANCE AND ANNUITY  
COMPANY,

Plaintiff

v.

KUMBIRAI CHIWARA USHE,

FIDES PERDITA USHE AS MOTHER  
AND NATURAL GUARDIAN OF  
KUMBIRAI CHIWARA USHE,

ZVIDZAI G. USHE,

DUMAZILE Z. USHE,

NTOMBIZODWA KUMALO-USHE  
(LAST SPOUSE OF SAMSON CHIWARA  
USHE), individually and as Administratrix  
of the ESTATE OF SAMSON CHIWARA  
USHE,

Defendant

CIVIL ACTION NO. 04 CV 11571 GAO

September 16, 2004

ANSWER AND CROSS CLAIM OF DEFENDANTS, KUMBIRAI CHIWARA USHE  
AND FIDES PERDITA USHE

Now comes the defendant, Kumbirai Chiwara Ushe, and make the following  
answer to the plaintiff's Complaint:

1. The defendant admits the allegations contained in Paragraphs 1 through 4 of the plaintiff's Complaint for Interpleader.
2. The defendant admits the allegations contained in Paragraphs 1 through 7 of the heading "PARTIES", and the defendant also alleges that she is a minor, and her mother, Fides P. Ushe has been appointed her guardian by Hampden County Probate Court, Case No. 04P-0330.
3. The defendant admits the allegations contained in Paragraphs 8 through 13 of Count I of the plaintiff's Complaint.

4. The defendant is without sufficient facts to admit or deny the allegations set forth in Paragraphs 14 and 15 of the plaintiff's Complaint, and leaves the plaintiff to its proof.

WHEREFORE, the defendant, KUMBIRAI CHIWARA USHE, respectfully request that

1. The Court adjudge her to be the sole owner of ING annuity contract bearing the account number G50000376 069447399; and
2. Each of the other defendants be restrained from instituting any action against her for recovery of said contract, or any part thereof.

IN FURTHER THE ANSWER, the defendant, KUMBIRAI CHIWARA USHE, states that:

1. She is the named beneficiary of one-third of all the proceeds contained in the ING annuity contract bearing the account number G50000376 069447399
2. To her knowledge and belief, there is no dispute by any of the parties that she is entitled to at least a one-third interest of said accounts.

WHEREFORE, the defendant, KUMBIRAI CHIWARA USHE, demands that the Court forthwith adjudge her the beneficiary of one-third of the ING annuity contract bearing the account number G50000376 069447399.

#### CROSS-CLAIM


The defendant, KUMBIRAI CHIWARA USHE, by way of a cross-claim against the defendants, ZVIDZAI G. USHE, DUMAZILE Z. USHE, NTOMBIZODWA KUMALO-USHE, individually and as Administratrix of the ESTATE OF SAMSON CHIWARA USHE, and states:

1. The defendant, KUMBIRAI CHIWARA USHE, restates the allegations set forth in Paragraphs 1 through 13 in the plaintiff's Complaint as though they were fully set forth herein.
2. As a result of the agreement signed by Samson Chiwara Ushe and Fides Perdita Ushe, which was incorporated into a Judgement of Divorce Nisi between said parties, KUMBIRAI CHIWARA USHE is entitled to be the sole beneficiary of the ING annuity contract bearing the account number G50000376 069447399.

WHEREFORE, the defendant, KUMBIRAI CHIWARA USHE, demands that this Court adjudge her to be the sole beneficiary of the ING annuity contract bearing the account number G50000376 069447399.

The Defendants,  
KUMBIRAI CHIWARA USHE and  
FIDES PERDITA USHE

Date: September 16, 2004

By:   
Joseph M. Lavinski, Esquire BBO# 288680  
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Springfield, MA 01103  
Phone (413) 739-9762  
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CERTIFICATE OF SERVICE

I, Joseph M. Lavinski, attorney for the defendant, Kumbirai Chiwara Ushe, hereby certify that I have on this date mailed a copy of the foregoing document to all interested parties as follows:

Jane E. Crosby, Esquire, 20 Maple Street, Springfield, MA 01103, Counsel to Ntombizodwa-Ushe, Individually and as Administratrix of the Estate of Samson Chiwara Ushe


Zvidzai Ushe, 3602 Fieldcrest Lane, Ypsilanti, MI 48197

Dumazile Z. Ushe, 767 St. Lawrence Avenue, Buffalo, NY 14201

Robert L. Ciociola and Gabriel D. M. Ciociola, Litchfield Cavo, 6 Kimball Lane, Suite 100, Lynnfield, MA 01940, counsel for ING Life Insurance & Annuity Company

Ntombizodwa Kumalo-Ushe, Resident Agent, 20 Paine Road, Randolph, MA 02368

Date: September 16, 2004

  
Joseph M. Lavinski, Esquire